



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (San Francisco)

ROBERT NICHOLS; JAMES
CARLTON; DAUNA PATEL;
RAVINDRA PATEL; PAM REID;
ROBERT REID; ESTELLA RENO;
WILLIAM E. RENO; JANET ROGERS;
LINDA SNOW; GEORGE STEPHENS;
GAYLE M. STEPHENS; RONALD
TAYLOR; GEORGE WEST; JESSIE
WEST; HARRY WINN; and CAROLYN
WINN,

Plaintiffs,

v.

DEPUY ORTHOPAEDICS, INC.,
THOMAS P. SCHMALZRIED, M.D., A
PROFESSIONAL CORPORATION; and
DOES 1 through 20, inclusive,

Defendants.

CASE NO. 3:11-cv-04748-JW
[State Case No. CGC-11-513627]

**~~PROPOSED~~ ORDER EXTENDING TIME
TO RESPOND TO COMPLAINT (L.R. 6-1)
RE THOMAS P. SCHMALZRIED, M.D., A
PROFESSIONAL CORPORATION**

Complaint served: August 29, 2011
Removal Date: September 22, 2011
Current Response Date: October 29, 2011
Agreed Response Date: after ruling on
pending motions

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Defendant Thomas P. Schmalzried, M.D., A Professional Corporation ("Defendant")
hereby requests, and Plaintiffs Robert Nichols; James Carlton; Dauna Patel; Ravindra Patel; Pam
Reid; Robert Reid; Estella Reno; William E. Reno; Janet Rogers; Linda Snow; George Stephens;

1 Gayle M. Stephens; Ronald Taylor; George West; Jessie West; Harry Winn; And Carolyn Winn
2 (“Plaintiffs”) hereby agree to Defendant’s request, for an extension of time for Defendant to file
3 a response to Plaintiffs’ Complaint as follows:

4 WHEREAS, Plaintiffs’ Complaint was filed in state court on August 24, 2011 and
5 Defendant was served on or about August 29, 2011;

6 WHEREAS, this matter was removed to this court on September 22, 2011;

7 WHEREAS, Defendant and Plaintiff previously stipulated to a 30-day extension of time
8 for Defendant to respond up to October 29, 2011;

9 WHEREAS, since the above noted stipulation was filed, the following has occurred in
10 this matter:

- 11 1) A Conditional Transfer Order regarding the transfer of this matter to MDL
12 No. 2244, *In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products*
13 *Liability Litigation*, was filed on October 11, 2011, which order was opposed by
14 Plaintiffs on October 12, 2011. Plaintiffs’ motion to vacate this order is due on
15 October 26, 2011 and DePuy’s response is due November 16, 2011.
- 16 2) On September 29, 2011, DePuy filed a Motion to Stay pending transfer to MDL
17 No. 2244, which Plaintiffs opposed on October 13, 2011. The stay motion is set
18 for hearing on November 7, 2011.
- 19 3) On October 3, 2011, Plaintiffs filed a Motion to Remand this action to the
20 Superior Court for the County of San Francisco. DePuy Opposed the motion on
21 October 17, 2011. The remand motion is set for hearing on November 7, 2011.

22 WHEREAS, all of the issues described above remain unresolved at present, leaving
23 doubt as to which court this matter will ultimately be litigated in and what manner of response
24 would be consistent with the rules and procedures of that court.

25 WHEREAS, Defendant requests an extension of time to respond to Plaintiffs’ complaint
26 until such time as the venue and jurisdiction of this matter is resolved, and Plaintiffs have agreed.
27 In addition to avoiding unnecessary confusion and additional complication while the pending
28 motions and issues are addressed and resolved, this extension will also allow the parties

1 sufficient time and opportunity to further meet and confer on the claims and causes of action
2 asserted in the complaint with the goal of potentially avoiding future motions by Defendant,
3 partially in light of the resolution of the issues already pending. Thus, this extension of time
4 allows this Court to resolve these issues of jurisdiction and venue before Defendant responds to
5 the Complaint.

6 THEREFORE, the parties agree that the response of Defendant Thomas P. Schmalzried,
7 A Professional Corporation to the Complaint shall be due at the earlier of these two potential
8 days:

- 9 1. 20 days after the United States Judicial Panel on Multidistrict Litigation rules on
10 whether to transfer this matter to MDL No. 2244, *In Re: DePuy Orthopaedics, Inc.,*
11 *Pinnacle Hip Implant Products Liability Litigation*; or,
- 12 2. 30 days after this Court grants Plaintiffs' Motion to Remand, if such a ruling occurs.

13 **IT IS SO ORDERED.**

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16 DATED: October 27, 2011 _____

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20 Judge of the United States District Court
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